



**University of California
Ernest Orlando Lawrence
Berkeley National Laboratory**

GENERAL PROVISIONS FOR COMMERCIAL SUPPLIES AND SERVICES

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Items" means the commercial items or commercial components, as defined in FAR 52.202-1, contracted for under the Subcontract.
- "DOE" means the U. S. Department of Energy.
- "Government" means the United States Government.
- "LBNL" means the Ernest Orlando Lawrence Berkeley National Laboratory.
- "Subcontractor" means the party who has entered into the Subcontract, as identified in the Subcontract.
- "University" means The Regents of the University of California, acting through the LBNL.

SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of commercial items or commercial components, as defined in FAR 52.202-1, and shall not include any research, development, or demonstration work.

The Subcontract is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not acceptable and shall constitute a proposal for modification of the Subcontract only and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

In the event the Subcontractor's business status indicated on the face of this Subcontract is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel this Subcontract, without further obligation.

SHIPMENTS FOR UNIVERSITY'S ACCOUNT

Except as otherwise provided in the Subcontract, all shipments by the Subcontractor for the University's account shall be (1) shipped FOB Shipping Point and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by the University and not insured by the Subcontractor. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of this Subcontract shall be deducted from the Subcontractor's invoice(s).

TITLE AND RISK OF LOSS

Unless otherwise provided in the Subcontract, title to the items purchased under the Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Subcontractor until, and shall pass to the University upon:

- If F.O.B. Shipping Point: Completion of delivery to the carrier and any loading by the Subcontractor.
- If F.O.B. Destination: Completion of delivery or commencement of unloading by the University at the delivery point.

However, (1) if the Subcontract provides for formal acceptance of any items by the University, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are non-conforming shall remain with the

Subcontractor until acceptance of the items by the University as conforming.

PACKAGING INSTRUCTIONS

The Subcontractor shall suitably package the items to prevent damage during handling and shipping. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Subcontractor, anything to the contrary notwithstanding. The Subcontractor shall indicate the University Subcontract number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

The University encourages the use of biodegradable packaging materials. To assist in this endeavor, the Subcontractor is requested to use every reasonable effort to use biodegradable packaging materials for shipments to the University.

INSPECTION

The University reserves the right to inspect all and every part of the Items under the Subcontract, during and after completion of performance. The University shall not be obligated to inspect the Items, and neither the inspection nor the lack of inspection by the University shall relieve the Subcontractor of its responsibility for providing the Items in accordance with the terms and conditions of the Subcontract. The inspection or use of or payment for an Item under the Subcontract, either wholly or in part, shall not be construed as an acceptance.

If any Item or any part of it is not in accordance with the terms and conditions of the Subcontract, the University shall notify the Subcontractor that the Item is rejected. Thereupon, the Subcontractor shall, at its own expense, take the necessary corrective action. The University shall reject performance or revoke its acceptance of an Item: (1) within a reasonable time after a defect is discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the Item, unless the change is due to a defect in the Item.

INVOICES

The Subcontractor shall submit its invoice at the time of final shipment, unless otherwise provided in the Subcontract. The invoices shall reference the Subcontract Number and include a complete description of the items, prices, and ship dates, and the name of the University's LBNL Procurement Representative. Failure to comply with any of these requirements may result in a delay in payment of the invoices.

PAYMENT

Unless otherwise provided in the Subcontract, the terms of payment shall be 30 days after receipt of the Subcontractor's properly submitted invoice. Any offered discount shall be taken if payment is made within the discount period indicated by the Subcontractor. Invoices must be accompanied by transportation receipts, or facsimiles, if transportation is payable and charged as a separate item.

QUALITY OF ITEMS

The Items(s), including any materials and supplies furnished by the Subcontractor in performance of any services, shall as a minimum: (1) be new or reconditioned and so identified and warranted as new and not of such age or so deteriorated as to impair their usefulness or safety; (2) be as warranted; and (3) not contain any counterfeit or suspect materials, parts, or components. The furnishing of reconditioned Items must be specified in the Subcontract or approved by the University's LBNL Procurement Representative. Types of materials, parts, and components known to have been counterfeit or suspect include, but are not limited to: electrical components, piping, fittings, flanges, and fasteners. The University will not accept any Items or any services involving the furnishing of materials or supplies found by the University to not conform to these minimum requirements, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the LBNL Procurement Representative.

FORCED, CONVICT, AND INDENTURED LABOR

(a) By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

WARRANTY

The Subcontractor warrants that the Items are merchantable and fit for use for the particular purpose described in the Subcontract. Except as otherwise provided by an express or implied warranty, the Subcontractor will not be liable to the University for consequential damages resulting from any defect or deficiencies in accepted Items.

LAWS AND REGULATIONS

The Items shall be designed, produced, sold, and delivered in accordance with, and Subcontractor and its employees and sub-vendors shall at all times comply with, all applicable state and federal laws, ordinances, statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, and safety (including OSHA).

CHANGES

Changes in the terms and conditions of the Subcontract may be made only by the written agreement of the parties.

TAX ASSESSMENT NOTIFICATION

The Subcontractor agrees to notify the University of any State or local law tax, fee or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract for which an exemption is claimed by the University or concerning which the Subcontractor has reason to believe or the University has advised the Subcontractor that such tax, fee, or charge is or may be inapplicable or invalid. The Subcontractor further agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

ASSIGNMENTS

This Subcontract is assignable by the University to the Government or a successor-in-interest.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

DISPUTES

Except as otherwise provided in the Subcontract, any claim under the Subcontract not resolved in the ordinary course of business shall be referred in writing to the LBNL procurement representative and the executive management representative of the Subcontractor with the authority to settle the dispute. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be

treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

Any unresolved dispute with a value under \$100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA.; (2) the location for all arbitrations shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these General Provisions entitled *GOVERNING LAW AND VENUE*.

BANKRUPTCY

If the Subcontractor enters into any proceeding related to bankruptcy, it shall give written notice to the University's LBNL Procurement Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LBNL purchase orders, subcontracts, or agreements affected.

EXCUSABLE DELAYS

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the University in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give the University written notice of the cessation of such occurrence.

TERMINATION

The Subcontract may be terminated by either party at any time, at will, with or without cause, with or without the giving of any reasons, and by giving notice to the other party at least 15 calendar days before the termination is to be effective.

In the event of a termination by the University, the Subcontractor shall be paid, subject to the terms and conditions of the Subcontract, a percentage of the Subcontract price reflecting the percentage of work performed prior to the notice of termination, plus any reasonable charges resulting from the termination which the Subcontractor can substantiate to the satisfaction of the University, using the Subcontractor's standard record keeping system; provided, however, that the total thereof shall not exceed the Subcontract price. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

In the event of a termination by the Subcontractor, the University shall be paid, subject to the terms and conditions of the Subcontract: (1) its costs incurred in obtaining substitute performance from another source, including, without limitation, the difference between the price for the terminated Items and the market price for substitute items at the time of the termination plus the University's costs and expenses incurred in obtaining substitute performance, and any other reasonable expense incident to the termination, but less any expenses saved in consequence of the termination; and (2) any incidental or consequential damages resulting from any delay in obtaining substitute performance beyond the time stipulated for the Subcontractor's performance.

If a default occurs under the Subcontract, and if within 30 calendar days after the non-defaulting party has given the defaulting party notice of the event of default the defaulting party has not cured the default or, if the default cannot be reasonably cured within such time period, if the defaulting party has not commenced the cure within such time period, diligently continued to pursue such cure, and completed it within 45 days after such notice, the non-defaulting party may, at its option, terminate the Subcontract at any time thereafter upon written notice to the defaulting party. In the event of a termination for default, the non-defaulting party may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these General Provisions entitled *GOVERNING LAW AND VENUE*.

WORK ON UNIVERSITY OR GOVERNMENT PREMISES *(Applicable to Subcontracts involving Subcontractor's performance at University or Government-owned sites or facilities.)*

(a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) **Indemnify and Hold Harmless.**

(1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborers', materialmen's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and

(2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means. The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(c) **Cleaning Up.** The Subcontract shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its lower-tier subcontractors' tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and its lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(d) **Employees.**

(1) The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work

incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall remove such person from the work under the subcontract, and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

(2) It is understood that if employees of the University shall perform any acts for the purpose of discharging the responsibility undertaken by the Subcontractor hereunder, whether requested to perform such acts by the Subcontractor or not, such employees of the University while performing such acts shall be considered the agents and servants of the Subcontractor subject to the exclusive control of the Subcontractor.

(e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors' compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) **Environment, Safety, Health, and Fire Protection.**

(1) The Subcontractor shall take all reasonable precautions in the performance of the work under this subcontract to protect the health and safety of employees and members of the public; minimize danger from all hazards to life and property; and, to the extent compliance is required, shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. This corrective action shall include, at a minimum, that the Subcontractor submit a management program and implementation plan to the University for review and approval within 30 days after the date of award of this subcontract. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

(2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

SAFETY MANAGEMENT PLAN AND REPORTING

(Applicable to Subcontractors with ten or more employees working at University or Government-owned sites or facilities [herein called LBNL Site] except for work involving construction and contract labor when Subcontractor's employees receive specific task assignments from University employees.)

(a) Subcontractor shall, upon award of the Subcontract, submit a copy of Subcontractor's Safety Management Plan for University approval to LBNL's EH&S Field Support Department, MS 90-1140. Subcontract work may not begin at the LBNL site until approval of the plan has been given by the University's EH&S Field Support Department. The Safety Management Plan shall satisfy, as a minimum, the requirements for the Injury and Illness Prevention Program required by Cal-OSHA General Industry Safety Orders §3203. University approval of this plan shall be considered as meeting DOE requirements for Integrated Safety Management. University approval of the plan is for the purpose

of verifying that the plan meets University requirements and is not an endorsement of the adequacy of the plan for protecting Subcontractor's employees from all occupational injuries and illness cases. Assuring the safety and health of Subcontractor's employees shall at all times remain the responsibility of the Subcontractor.

(b) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(c) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

RELEASE, PUBLICATION AND USE OF DATA *(Applicable to Subcontracts involving production of computer software. When applicable, the Subcontractor shall include this clause in its subcontracts at any tier.)*

The Subcontractor agrees not to establish claim to copyright in computer software first produced in the performance of this Subcontract without prior written permission being granted by the DOE Patent Counsel. The DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to the DOE Patent Counsel, a duly executed and approved instrument fully confirming all rights to which the Government is entitled.

RELEASE OF INFORMATION

Information regarding this Subcontract or the undertaking or any data developed hereunder shall not be released, and the name of the University, LBNL, or the Government shall not be used, in any publications, news releases, advertising, speeches, technical papers, photographs and other releases of information, without prior written approval from the LBNL Procurement Representative.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the Subcontract, as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the Subcontractor; the term "subcontractor" shall mean the Subcontractor's subcontractor, and the terms "Government" and "Contracting Officer" shall mean the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier for the Items, including any of its components, to the extent applicable.

FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
FAR 52.219-8	UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 2000), if the Subcontract exceeds \$100,000.
FAR 52.219-9	SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED BUSINESS SUBCONTRACTING PLAN (OCT 2000), if the Subcontract exceeds \$500,000, unless the Subcontractor is a small business or there are no subcontracting possibilities.
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: http://www.dol.gov/esa/ ; select "Posters" then "Equal Employment Opportunity Act")

FAR 52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (12/01), if the Subcontract exceeds \$25,000.
FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (6/98), if the Subcontract exceeds \$10,000.
FAR 52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001), if the Subcontract exceeds \$25,000.
FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989), if the Subcontract is principally for the furnishing of services through the use of "service employees" and if the subcontract exceeds \$2,500 UNLESS the Subcontract qualifies for class deviation under Section 4(b) of the McNamara-O'Hara Service Contract Act.
FAR 52.222-44	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989), if the Subcontract is principally for the furnishing of services through the use of "service employees" and if the subcontract exceeds \$2,500 UNLESS the Subcontract qualifies for class deviation under Section 4(b) of the McNamara-O'Hara Service Contract Act.
FAR 52.225-1	BUY AMERICAN ACT – SUPPLIES (MAY 2002)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995) with Alternate 1 (APR 1984)
FAR 52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996), if the Subcontract exceeds \$100,000.
FAR 52.227-3	PATENT INDEMNITY (APR 1984), if the Subcontract exceeds \$100,000.
FAR 52.227-14	RIGHTS IN DATA - GENERAL (JUN 1987) including Alternate V and DEAR 927.409 (a) (1). If delivery of limited right data is required, add Alternate II. If delivery of restricted computer software is required, add Alternate III.
FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987), if the Subcontract involves the acquisition of commercially available computer software & a GSA/Subcontractor Multiple Award Federal Supply Schedule Contract is not applicable.
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)
FAR 52.245-4	GOVERNMENT FURNISHED PROPERTY (SHORT FORM) (APR 1984), if the Subcontract is \$100,000 or less.
DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the PO involves any of the hazardous activities stipulated in 10 CFR 707.2.
DEAR 970.5204-59	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999), if the work is performed on-site at a DOE-owned or leased facility.
DEAR 970.5223-2	AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract Signature Page, any Special Provisions, these General Provisions, and any other referenced and incorporated clauses, provisions and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following

order: (a) the Subcontract document; (b) any Special Provisions; (c) these General Provisions; (d) the clauses listed in the provision of these General Provisions entitled *CLAUSES INCORPORATED BY REFERENCE*; (e) any specifications; (f) other documents listed in the special provision entitled INCORPORATED DOCUMENTS, if any, in the order in which they are listed; and (g) any other documents, exhibits, or attachments.

DOCUMENTS OF SUBCONTRACTOR

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price therefor, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

GOVERNING LAW AND VENUE

The Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County.